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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK THOMAS JR.,
Plaintiff,

vs.

WESTGATE RESORT & CASINO and
CAMI CHRISTENSEN
Defendants.

Case No. 2:16-cv-02261-JAD-GWF

ORDER AND REPORT
AND RECOMMENDATION

13 This matter is before the Court on Plaintiff's Motion for 30-Day Extension (ECF No. 11)
14 and Motion to Show Cause (ECF No. 12), filed on August 23, 2017.

15 Plaintiff, who is proceeding in this action *pro se*, filed a Application for Leave to Proceed *in*
16 *Forma Pauperis* (ECF No. 1) along with a Complaint (ECF No. 1-1) on September 27, 2017. The
17 Court issued a Screening Order on June 1, 2017 granting Plaintiff *in forma pauperis* status but
18 dismissing Plaintiff's complaint for failure to properly allege that the Court has jurisdiction over his
19 claims and for failure to sufficiently allege a legal theory under which he sought to sue Defendants.
20 See ECF No. 2. The Court gave Plaintiff until June 30, 2017 to file an amended complaint that
21 would correct those deficiencies. *Id.* Plaintiff did not file an amended complaint. The Court
22 ordered Plaintiff to show cause, in writing, why this case should not be dismissed for his failure to
23 file an amended complaint. See *Response* (ECF No. 6). After a brief extension of time, Plaintiff
24 filed a response. See ECF No. 9. The Court advised Plaintiff that his response could not be
25 construed as an amended complaint because it failed to correct the deficiencies addressed in the
26 Court's Screening Order. See *Order* (ECF No. 10). The Court, however, allowed Plaintiff until
27 August 25, 2017 to file an amended complaint.

28 Plaintiff filed the instant Motion to Show Cause on August 23, 2017. Construing this

1 motion as an amended complaint, the Court again finds that it is deficient. Plaintiff's motion fails to
2 establish that this Court has jurisdiction over his claims and fails to state any cause of action.
3 Plaintiff is arguably attempting to allege that Defendants were negligent when a fire occurred at
4 Defendant's place of business. However, Plaintiff failed to successfully allege the elements of a
5 negligence claim.¹ Plaintiff was cautioned that failure to cure the deficiencies identified in the
6 Court's Screening Order would result in a recommendation that the complaint be dismissed with
7 prejudice. Therefore, the Court recommends that this matter be dismissed. Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff's Motion for 30-Day Extension (ECF No. 11) is
9 **denied.**

10 **RECOMMENDATION**

11 **IT IS HEREBY RECOMMENDED** that Plaintiff's complaint be dismissed with prejudice
12 for failure to state a claim upon which relief may be granted.

13 **NOTICE**

14 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
15 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
16 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
17 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has
18 also held that (1) failure to file objections within the specified time and (2) failure to properly
19 address and brief the objectionable issues waives the right to appeal the District Court's order and/or
20 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157
21 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

22 DATED this 30th day of August, 2017.

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24 
25 GEORGE FOLEY, JR.
26 United States Magistrate Judge

27 ¹To state a claim for negligence a plaintiff must establish that: (1) defendant owed a duty to the plaintiff; (2) the
28 defendant breached that duty causing injury to the plaintiff; (3) the breach was the actual cause of the plaintiff's injury; and (4)
the injury was a foreseeable consequence of defendant's breach. See *Hammerstein v. Jean Dev. W.*, 907 P.2d 975, 977
(Nev.1995); see also *Prescott v. United States*, 858 F.Supp. 1461, 1471 (D.Nev.1994).